(4)

No. 05-1631

IN THE

Supreme Court of the United States

TIMOTHY SCOTT, DEPUTY SHERIFF,
COWETA COUNTY, GEORGIA,
Petitioner,

v.

VICTOR HARRIS,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, COUNCIL OF STATE GOVERNMENTS, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, U.S. CONFERENCE OF MAYORS, AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS *AMICI CURIAE* SUPPORTING PETITIONER

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QUESTION PRESENTED

Amici will address the following question:

Whether the decision of a police officer to effect the arrest of a fleeing motorist through a high-speed chase is reasonable under the Fourth Amendment.

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INTEREST OF THE *AMICI CURIAE*

Amici are organizations whose members include state, county, and municipal governments and officials throughout the United States.[1] They have a compelling interest in the issue presented in this case: the standard under which a law enforcement official who engages in a vehicular pursuit resulting in injury to the fleeing suspect may be held liable under the Fourth Amendment.

This case concerns an essential and longstanding tool for enforcing and maintaining respect for the rule of law. In today's highly mobile society, vehicular pursuits are vital to law enforcement's ability to apprehend suspects, conduct investigatory stops, and enforce important traffic and safety laws. The Court's decision regarding the extent to which such pursuits are subject to constitutional scrutiny under the Fourth Amendment will directly affect *amici* and their members: it will have an impact not only on the everyday decisions of law enforcement authorities across the country in conducting vehicular pursuits, but also on the ways in which state and local governments regulate police practices. *Amici* therefore submit this brief to assist the Court in the resolution of this case.

STATEMENT

While patrolling a highway at night in Coweta County, Georgia, Sheriff's Deputy Clinton Reynolds observed a car traveling 73 mph in a 55 mph zone. Pet. App. 2a. To alert the driver of his speed, Deputy Reynolds began to follow, flashing his cruiser's blue lights. In response, the speeding car

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[1] Pursuant to Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part and that no person other than *amici*, their members, and their counsel made a monetary contribution to its preparation or submission. The parties' letters consenting to the filing of this brief have been filed with the Clerk's office.

accelerated and headed toward the populated area of Peachtree City. *Id.* at 2a-3a, 31a.

Deputy Reynolds caught up to the driver and turned on his siren.[2] The vehicle continued to flee, traveling well in excess of the speed limit. The driver crossed the double-yellow line and passed cars on the wrong side of the road, breaking several traffic laws. Pet. App. 2a, 31a. Approaching a red light, the driver continued through the intersection, driving around vehicles waiting for the light to change. Deputy Reynolds alerted his dispatch that he was pursuing a fleeing suspect. *Ibid.*

Petitioner Timothy Scott overheard Reynolds' radio report and, in a position to assist, joined in the pursuit. As the fleeing car entered Peachtree City, it swerved into a drugstore parking lot. Two Peachtree City police cruisers were already in the lot, and together with Deputy Reynolds they attempted to box in the suspect's car. Deputy Scott proceeded around the parking lot to cut off the suspect's exit. Pet App. 3a, 32a.

Though accounts differ slightly as to what happened next, what is clear is that the fleeing suspect, encircled by three police cars, exited the parking lot. When Deputy Scott attempted to use his car to block the suspect's escape, the suspect collided with Deputy Scott's car. Pet. App. 32a. The suspect managed to get back onto the highway and once again fled at a high speed. *Ibid.*

Because he feared that the suspect posed an increasing danger to the public (Pet. 5), Deputy Scott, now the lead car in the chase, radioed for permission to perform a "PIT" (Precision Intervention Technique) maneuver. A PIT maneuver is "a driving technique designed to stop a fleeing motorist

[2] Turning on the siren activated a video camera mounted in Deputy Reynolds' car, which recorded the ensuing chase. Though the court below emphasized factual disputes between the parties, in reality these disputes are slight, because the police video camera captured vivid evidence of the events surrounding this suit.

safely and quickly by hitting the fleeing car at a specific point on the vehicle, which throws the car into a spin and brings it to a stop." Pet. App. 3a. Deputy Scott's request was in accordance with his department's policies on high-speed pursuits, which provided that "deliberate physical contact between vehicles at any time may be justified to terminate the pursuit upon the approval of the supervisor." *Id.* at 23a n.2 (quoting Coweta County Sheriff's Dep. Vehicle Pursuit Policy).

After receiving permission from his supervisor to employ a PIT maneuver (Pet. App. 4a) and ascertaining that no other motorists appeared to be in the area (Pet. 5-6; see also Pet. App. 11a), Deputy Scott decided to end the chase, which had now stretched over nine miles. *Id.* at 2a. Due to the suspect's high rate of speed, Deputy Scott was unable to perform a PIT, but he did manage to make contact with the suspect's rear bumper. This caused the suspect to lose control of his vehicle, which left the roadway and crashed. The suspect – respondent Victor Harris – was not wearing his seatbelt (Pet. 6) and, though he survived the crash, he was rendered a quadriplegic. Pet. App. 4a.

INTRODUCTION & SUMMARY OF ARGUMENT

The use of deadly force to end high-speed chases is very different from the typical use of deadly force to effect an arrest. The type of arrest at issue in *Tennessee* v. *Garner*, 471 U.S. 1 (1985), the principal authority relied upon by the Eleventh Circuit, involved the concentrated use of force against a single individual. A high-speed car chase over public highways, in contrast, has a much broader impact: whenever police resort to this technique to effectuate a seizure, they are necessarily creating risks not just for fleeing suspects, but for members of the general public as well.

The generalized impact of this policing technique creates distinctive practical and political considerations that must be taken into account under the Fourth Amendment. One is the

unique and complex balancing determinations officers must make when they decide whether to effectuate a seizure by these means. The fact-sensitivity of such determinations defies any clear set of judicially administrable standards such as those that regulate the use of a firearm to subdue a fleeing felon. Another is the unique stake the public itself has in assuring that officers make this determination in a reasonable way. In particular, because the public itself is placed at risk by high-speed chases, there are strong *political checks* against the use of this tactic absent a manifest gain to public safety that outweighs the lethal risks involved. This factor, too, is completely lacking in the sort of seizure exemplified by *Garner*, and reinforces the conclusion that close judicial oversight is unnecessary to assure that high-speed car seizures will be conducted in a reasonable fashion.

I. Policing techniques that affect the privacy or liberty of members of the public generally are presumptively reasonable under the Fourth Amendment. The Fourth Amendment prohibits searches and seizures that "unreasonably" subordinate the liberty or privacy of individuals to the state's interest in public safety. Where, as in *Garner*, police use concentrated force against a single individual, the public faces little risk to its own liberty and privacy. As a result, political assent and oversight are unreliable means of assuring that such seizures will be carried out in a way that strikes a reasonable balance between liberty and order. But where a police search or seizure technique *does* impinge significantly on the privacy or liberty of the public, the approval of democratically accountable actors *is* strong evidence that the technique in question is reasonable. Recent decisions upholding the constitutionality of law-enforcement checkpoints, sobriety checkpoints, and drug testing of students for sports and other extracurricular activities, have done so in large part on this ground.

II. High-speed chases – and seizures affected through them – have a generalized impact on the public, and are

therefore presumptively reasonable. A high-speed chase presents obvious and inescapable risks, not just to suspects but to members of the public. Not surprisingly, members of the public and their democratically accountable representatives have taken an active interest in assuring that this technique for effecting seizures is used *only* when the benefits it contributes to public order outweigh its risks. Indeed, more than 90 per cent of police and sheriff's departments have created polices to govern how officers should initiate, conduct, and terminate high-speed chases. Such policies evince the reality and effectiveness of political checks on seizures affected through high-speed chases.

III. Because Deputy Scott responded reasonably to a serious threat to public safety, he did not violate the Fourth Amendment. The purpose of and the method used to execute this seizure fell well within the zone of reasonableness. First, law enforcement officers have a clear right to pursue a suspect who recklessly flees by car. Second, high-speed pursuits are often useful for enforcing criminal laws and traffic safety. And once a chase begins, it is extremely dangerous and typically ends in a matter of minutes.

Deputy Scott had to make a split-second decision about how to neutralize a serious threat to public safety. He initiated the seizure of respondent only after ascertaining that no other motorists appeared to be in the immediate area, thus minimizing risk of harm to the public, though at considerable risk to himself. This Court should avoid second-guessing his decision, made with the permission of his supervisor and pursuant to the local policy, to end the pursuit by making contact with the fleeing suspect's vehicle.

ARGUMENT

I. POLICING TECHNIQUES THAT HAVE A GENERALIZED IMPACT ON THE PUBLIC ARE PRESUMPTIVELY REASONABLE UNDER THE FOURTH AMENDMENT.

The Fourth Amendment protects persons from "unreasonable searches and seizures." U.S. Const. Amend. IV. "[T]he standard of reasonableness governing any specific class" of such activities, this Court has recognized, requires a "balanc[ing]" of the affected person's "privacy and personal security" and government's interest in securing "public order." *New Jersey* v. *T.L.O.*, 469 U.S. 325, 337 (1985).

Although "'not capable of precise definition or mechanical application'" (*Graham* v. *Connor*, 490 U.S. 386, 396 (1989) (quoting *Bell* v. *Wolfish*, 441 U.S. 520, 559 (1979))), this balancing inquiry is appropriately sensitive to one factor of particular relevance here: namely, the *generality* of a policing technique's impact on the public at large. The more diffusely felt the impact of a policing technique is within a community, the more reason there is to view approval of that technique in the normal democratic political process as evidence that the imposition it imposes on liberty and privacy is indeed commensurate with the contribution it makes to public order. See, *e.g.*, *Illinois* v. *Lidster*, 540 U.S. 419, 426 (2004) (noting that "community hostility to related traffic tieups" will assure that police use generalized motorist checkpoints only when reasonable for apprehension of fleeing hit-and-run motorists); *Bd. of Educ.* v. *Earls*, 536 U.S. 822, 841 (2002) (Breyer, J., concurring) (citing approval in "democratic, participatory process" as evidence of reasonableness of school drug-testing policy applied generally to those involved in extracurricular activities).

Consistent with this principle, this Court has singled out for greatest judicial scrutiny those policing techniques that concentrate their coercive incidence on discrete individuals.

Because the interests of individual criminal suspects is usually a matter of indifference to the general public, it is unrealistic to expect "prosecutors and policemen * * * to maintain the requisite neutrality" in determining whether the invasion of privacy associated with a search of such a person's residence is justified by the state's need for evidence of crime. *Coolidge* v. *New Hampshire*, 403 U.S. 443, 450 (1971). Accordingly, before they may search the residence of an individual suspected of a crime, law enforcement authorities must obtain a warrant by demonstrating probable cause to a magistrate. See *ibid*; see also John Hart Ely, Democracy and Distrust 96-97 (1980).

Members of the public are also likely to be insufficiently invested in – indeed, potentially even hostile to – the interests of individual criminal suspects who are seized through the use of *concentrated* deadly force. Accordingly, the constitutionality of the use of a firearm to subdue a fleeing suspect must comply with judicially enforced constitutional standards. See *Garner*, 471 U.S. at 11-12.[3]

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[3] *Garner*, the decision principally relied upon by the Eleventh Circuit in its decision below, occupies one end of the spectrum of Fourth Amendment reasonableness. In holding that "[a] police officer may not seize an unarmed, nondangerous suspect by shooting him dead" (471 U.S. at 11), the Court found that all of the considerations bearing on reasonableness pointed one way. Obviously, the private interest is at its height in such a case, where a state actor applies force to the suspect with the intent to injure or kill. But the Court found that the other relevant factors also weighted the balance against finding such a shooting to be reasonable. The public interest in effecting an immediate seizure is relatively low "[w]here the suspect poses no immediate threat to the officer and no threat to others." *Ibid.* And objective indicia of societal attitudes toward the law enforcement conduct at issue in *Garner*, which provide some basis for assessing the reasonableness of the seizure, led to the same conclusion: the Court surveyed "the prevailing rules in individual jurisdictions" (*id.* at 15-16) and found that "a

In contrast, where policing techniques do meaningfully impinge on members of the public, this Court has generally viewed the need for judicially enforceable standards as unnecessary. In those circumstances, the incentive democratically accountable political actors have to avoid imposing resented burdens on their constituents operates as an assurance that the use of the technique, subject to whatever limits are placed on it by political actors themselves, strikes a reasonable balance between liberty and order.

In *Lidster*, for example, the Court upheld a police checkpoint set up to investigate a hit and run accident. The Court noted that no "rule is needed" to assure that such stops are "reasonable, [and] hence, constitutional" because "practical considerations – namely, limited police resources and community hostility to related traffic tieups[,]" can be expected to constrain the unwarranted use of this technique. 540 U.S. at 421, 426.

Likewise, law-enforcement officials need not obtain a warrant or even have probable cause to stop motorists at sobriety checkpoints (see *Michigan Dep't of State Police* v. *Sitz*, 496 U.S. 444 (1980)), or to search all persons entering airports (see *National Treasury Employees Union* v. *Von Raab*, 489 U.S. 656, 675 n. 3 (1989) (collecting cases)). Insofar as these policies impinge on the liberty and privacy of members of the public at large, there is far less reason for courts to doubt the determination of democratically accountable officials that such policies strike a fair balance between liberty and order. See generally Silas Wasserstrom & Louis

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majority of the police departments in this country have forbidden the use of deadly force against nonviolent suspects." *Id.* at 10-11. See *id.* at 16-19. Accordingly, nothing before the Court in *Garner* provided any assurance either that shooting a nondangerous suspect is reasonable or that, in situations where police confront nondangerous suspects, constraints exist to check unreasonable law enforcement behavior.

Seidman, *The Fourth Amendment As Constitutional Theory*, 77 Geo. L.J. 19, 95-96 (1988); Dan M. Kahan & Tracey Meares, *The Coming Crisis in Criminal Procedure*, 86 Geo. L.J. 1153, 1173-74 (1998).

When a law-enforcement policy affects a person other than the average citizen, political assent remains evidence of the policy's presumptive reasonableness if there is a strong alignment of interests between that person and members of the public at large. In *Vernonia School Dist. 47J* v. *Acton*, 515 U.S. 646, 650 (1995), for example, the Court upheld a drug testing policy for student athletes, in part because the students' parents, who can be presumed to value the privacy of their children, "gave their unanimous approval" to the policy in a public meeting. Likewise, deliberations in a "democratic, participatory process" also "revealed little, if any, objection" (536 U.S. at 841 (Breyer, J., concurring)) to the school drug-testing recently policy upheld in *Earls*. The "administrative search" doctrine, which treats warrantless searches of regulated commercial enterprises (see, *e.g.*, *New York* v. *Burger*, 482 U.S. 691 (1987)), may be justified on the analogous ground that members of the public as consumers will resist unreasonable intrusions into the operations of such businesses. See William Stuntz, *Privacy's Problem and the Law of Criminal Procedure*, 93 Mich. L. Rev. 1016, 1044-45 (1995).

To be sure, the generalized impact of a policing technique does not render it immune from Fourth Amendment scrutiny. At a minimum, however, it is a factor that militates strongly in favor of finding such acts to be reasonable.

II. HIGH-SPEED SEIZURES HAVE A GENERALIZED IMPACT ON THE PUBLIC AND ARE THUS PRESUMPTIVELY REASONABLE.

The source of the Eleventh Circuit's error in this case was its determination that a seizure effected through a high-speed chase raises the same types of considerations as the

deadly-force seizure at issue *Garner*. *Garner* arose in a context where many members of the public would have been personally unaffected by the interests of the individual suspect against whom deadly force was used. In sharp contrast, the conduct and termination of a high-speed chase presents inherent risks that are widely felt by the community; while most people surely do not envision being chased from someone else's yard by an armed patrolman (as was the suspect in *Garner*), many people can imagine being threatened by an unreasonably dangerous high-speed pursuit conducted on public roads. As one might expect, members of the public and their democratically accountable representatives have manifested an intense interest in assuring that this means of affecting an arrest is carried out *only* in circumstances where public safety clearly warrants it. Under these circumstances, the seizure at issue in this case should have been afforded the presumption of reasonableness extended to policing techniques that impinge on the liberty and privacy of members of the public generally.

A. High-Speed Seizures Create Risk Not Just For Suspects, But Also for Members of the Public.

The inherent dangerousness of the conduct and termination of high-speed chases means that this is a police practice that affects the public generally. There frequently are compelling reasons to initiate a high-speed chase, and there is no Fourth Amendment limit on the decision by law enforcement authorities to begin and continue a pursuit.[4] But there is no denying that the risk posed to the public by high-speed pursuits is also considerable.

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[4] The Court has made clear that "a police pursuit in attempting to seize a person does not amount to a seizure within the meaning of the Fourth Amendment." *County of Sacramento* v. *Lewis*, 523 U.S. 833, 843 (1998) (citing *California* v. *Hodari D.*, 499 U.S. 621, 626 (1991)).

1. The ability to chase fleeing suspects is an essential aspect of effective law enforcement. As the Court has noted, "[h]eadlong flight – wherever it occurs – is the consummate act of evasion: it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Illinois* v. *Wardlow*, 528 U.S. 119, 124 (2000). Studies, including one by respondent's expert witness, suggest that some 35 to 40 per cent of high-speed chases are initiated to apprehend felons. Geoffrey P. Alpert, Nat'l Inst. Of Justice, U.S. Dept. Of Justice, *Police Pursuit: Policies and Training* 3 (1997). More often than not, these pursuits are successful; in Metro-Dade, Florida, for example, 75 per cent of high-speed chases led to apprehension of the suspect. *Ibid.* And traffic violations may themselves be very dangerous offenses that pose a grave threat to public safety. See National Highway Transportation Safety Administration, *Traffic Safety Facts 2004 Data: Speeding* 1. In 2004, speeding contributed to 30 per cent of all fatal crashes, resulting in 13,192 lives lost. *Id.* That same year, there were an estimated 591,556 injuries in accidents where speeding was a contributing factor.[5]

Moreover, speeding often is associated with alcohol or drug abuse, which is itself a very significant cause of traffic fatalities and injuries. See National Highway Transportation Safety Administration, *Traffic Safety Facts 2004 Data: Speeding* 3. See *Sitz*, 496 U.S. at 451 (noting that "[n]o one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it"); *id.* at 455 (Blackmun, J., concurring in the judgment) ("agree[ing] with the Court's lamentations about the slaughter on our highways and about the dangers posed to almost everyone by the driver who is under the influence of alcohol or other drug[s]").

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[5] These data are available on request from the National Highway Traffic Safety Administration's National Center for Statistics and Analysis, http://www-fars.nhtsa.dot.gov/datarequests.cfm?Stateid=0&yea r=2005.

Considering that speeding and drunk driving together cause tens of thousands of deaths each year (see National Highway Transportation Safety Administration, *Traffic Safety Facts 2004 Data: Speeding* 1, *Alcohol* 1), an individual like respondent who demonstrates impaired judgment by speeding recklessly away from a law enforcement officer poses a clear and immediate danger to other drivers and pedestrians. In fact, this Court in *Garner* specifically referenced vehicle safety to show that some misdemeanants pose a greater risk to the public than do felons. *Garner*, 471 U.S. at 14.

2. Whenever automobiles travel at high speeds there is a danger of an accident, however, and that is no less true of police pursuits. Such pursuits do, unfortunately, lead to fatalities.[6] And in some instances these accidents cause injury to bystanders or drivers of other vehicles.[7]

High-speed chases accordingly pose a substantial risk to the public that is, in significant respects, similar in kind to that faced by the fleeing suspect and the pursuing officer. Simply put, both the public and the suspect want officers to refrain from engaging in unreasonably dangerous high-speed chases and seizures that result in either driver losing control and terminate in an accident and injury.

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[6] From 2000 to 2005, there were an annual average of 362 pursuit-related fatalities. These data are available on request from the National Highway Traffic Safety Administration's National Center for Statistics and Analysis, http://www-fars.nhtsa.dot.gov/data_requests.cfm?stateid=0&year=2005.

[7] See National Highway Traffic Safety Administration National Center for Statistics and Analysis, http://www-fars.nhtsa.dot.gov/data_requests.cfm?stateid=0&year=2005; National Highway Traffic Safety Administration, *Travel Safety Facts 2004*, at 94. See also *Jones v. Chieffo*, 833 F. Supp. 498, 509 (E.D. Pa. 1993); Seth Mydans, *Alarmed by Deaths in Car Chases, Police Curb High-Speed Pursuits*, *New York Times*, Dec. 26, 1992, at 1.

B. The Political Process Imposes Significant Checks On High-Speed Seizures.

As might be expected, the visibility of high-speed pursuits and their effect on members of the public have generated significant political scrutiny of the practice. High-speed pursuits on public roads create a spectacle, and the media has eagerly covered these dramatic events.[8] As a result, the public understands the dangers involved in high-speed chases, and communities have engaged politically on the question of when to employ this seizure technique.

Surveying only the last ninety days of American newspapers, numerous articles demonstrate the political salience of high-speed pursuits. Communities across the country are debating when the police should engage in such chases. In Noble, Oklahoma; Kansas City, Missouri; and Burlington, North Carolina, for example, city councils have heard public complaints about recent high-speed pursuits, and the cities have acted to investigate police procedures.[9] Editorials on both sides of the issue have appeared in local newspapers in

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[8] Reporting on high-speed pursuits has become a fixture of local news broadcasts, and an entire television show has been created to air footage of police pursuits. See Theodore O. Prosise & Ann Johnson, *Law Enforcement and Crime on* Cops *and* World's Wildest Police Videos*: Anecdotal Form and the Justification of Racial Profiling*, 68 Western J. Comm. 72, 74 (2004) (discussing "World's Wildest Police Videos," a television show that in its first year earned the second highest Neilson ratings in its timeslot).

[9] *See* Jennifer Griswold, *Wreck Puts Pursuit Policy in Review*, The Oklahoman (Oklahoma City), Oct. 18, 2006, at 4D; Robert Boyer, *Crash Victim's Sister Calls for Chase Policy Changes*, Times-News (Burlington, N.C.), Oct. 18, 2006; Bill Graham & Glenn E. Rice, *Loss of 4 Leaves Grief, Shock; As Friends and Family Recall Wreck Victims, Some Have Questions About the Police Chase*, Kansas City Star, Sept. 22, 2006.

Richmond, Virginia, and St. Petersburg, Florida.[10] And the police departments themselves are convening boards to review their procedures after well-publicized pursuits in Phoenix, Arizona; Lakeland, Florida; and Ada County, Idaho.[11]

Police departments in nearly every city in the country have reacted to public concern by instituting "pursuit policies" to govern when officers may effect seizures through high-speed pursuits. U.S. Department of Justice data show that in 2003, 94 per cent of all local police departments – and almost 100 per cent of departments serving populations greater than 10,000 – had a written policy on pursuit driving. See Matthew J. Hickman & Brian A. Reaves, Bureau of Justice Statistics, U.S. Dept. of Justice, *Local Police Departments, 2003*, at 24 (2006). Data for local sheriffs' departments are similar: in 2003, 95 per cent of sheriffs' departments had written pursuit policies. See Matthew J. Hickman & Brian A. Reaves, Bureau of Justice Statistics, U.S. Dept. of Justice, *Sheriffs' Offices, 2003*, at 24 (2006).

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[10] *Compare* A. Burton Hinkle, Editorial, *Fewer Chases Could Save Lives, Including Officers'*, Richmond Times Dispatch, Sept. 8, 2006, at A-11 (arguing that while "more than 300 people a year are killed in America during high-speed police chases," the "average annual number of serial killers caught in high-speed chases is zero"), *with* Dan Spice, Editorial, *Deluge of Car Thefts Is Unforgivable*, St. Petersburg Times (Florida), Sept. 24, 2006 (arguing that a local policy geared toward reducing high-speed chases encourages crime, since "[t]he message is clear: It's a free ride in St. Petersburg for crime").

[11] *See* Judi Villa, *New Pursuit Policy Reduces Phoenix Police Car Chases*, Arizona Republic (Phoenix), Sept. 20, 2006, at 1; Dave Nicholson, *Review Finds Lakeland Police Followed Policy in Fatal Chase*, Tampa Tribune, Oct. 7, 2006, at 4; Patrick Orr, *Ada County Police Agencies Agree on Plan for Hot Pursuits; Policy Aims To Minimize Danger by Clarifying Who's in Charge and Limiting the Number of Patrol Cars*, Idaho Statesman (Boise), Oct. 7, 2006, at 1.

The trend, furthermore, is to respond to the public's concerns by enacting more restrictive policies. A 1997 study found that, in a representative sample of police departments nationwide, nearly half of all departments with pursuit policies had updated their policy in the last two years. Dennis Jay Kenney & Geoffrey P. Alpert, *A National Survey of Pursuits and the Use of Police Force: Data from Law Enforcement Agencies*, 25 J. Crim. Just. 315, 318 (1997). Of those departments, 87 per cent had changed their policy to further restrict the use of high-speed pursuits. *Ibid.* Currently, 61 per cent of all local police departments – and over 80 per cent of departments serving populations greater than 10,000 – have "restrictive" policies that limit "pursuits according to specific criteria such as type of offense or maximum speed." Hickman, *Local Police Departments, 2003*, *supra*, at 24.

These changes to pursuit policies have changed police practice. In Metro-Dade, Florida, for example, officials made the department's pursuit policy more restrictive. The year before the policy was changed, officers engaged in 279 pursuits. The year after the change, that number dropped to 51. Alpert, *Police Pursuit: Policies and Training*, *supra*, at 4. In Omaha, Nebraska, by contrast, after the police pursuit policy was changed to be more *permissive*, the number of annual high-speed pursuits jumped from 17 to 122. *Ibid.* These numbers also suggest the importance of allowing sufficient flexibility to local authorities, who are best able to establish rules that take account of local variations and conditions: a restrictive pursuit policy that strikes the proper balance for a large metropolitan region may not be effective or strike the right balance in a smaller urban area.

In sum, precisely because arrests effected by high-speed chases put members of the public and not just individual suspects at risk, they have generated intense and effective political oversight. Under these circumstances, there is every reason to think the police will use this technique *only* when the contribution it makes to "public order" outweighs the impact

it has on "privacy and personal security" (*T.L.O.*, 469 U.S. at 337).

C. The Impact Of High-Speed Seizures On The Public Is At Least As Generalized As That Of Other General-Impact Policing Techniques Held Reasonable By This Court.

As discussed above, this Court has frequently concluded that the generalized impact of and associated political checks upon the use of a policing technique render judicially enforceable limitations on that technique unnecessary to assure its reasonable exercise. Those considerations are even more forcefully presented in this case. Whereas the Court expected the mere inconvenience of "traffic tieups" (540 U.S. at 426) to motivate public oversight in *Lidster*, for example, here it is the prospect of serious injury or even death on the highway that can be expected to generate – indeed, has generated – intense public scrutiny.

The fact that the intended target of the police force in this case is the fleeing suspect and not members of the public does not change this conclusion. As we have noted, this Court has frequently treated political assent as furnishing evidence (and ongoing assurance) of reasonableness when policing techniques affect third parties whose interests are closely aligned with those of the public. See *Earls*, 536 U.S. 822 (school children); *Vernonia School Dist. 47J*, 515 U.S. 646 (same); *Burger*, 482 U.S. 691 (regulated businesses). The alignment of the public's interest and the targeted party's interest is at least as close in the high-speed chase setting as it was in any of these other settings, and involves stakes – including death for ordinary citizens – that are in fact much graver.

For these reasons, identifying the circumstances under which the police should chase and seize fleeing suspects is a question that has in fact engendered intense debate across the country. "When trying to resolve this kind of close question

involving the interpretation of constitutional values," the Court should take into account the fact that members of the public who may be affected have had "the opportunity to be able to participate" in the reasonableness calculus. *Earls*, 536 U.S. at 841 (Breyer, J., concurring). In fact, nearly all localities have instituted and are continually updating pursuit policies. Therefore, as the *Sitz* Court recognized with respect to sobriety checkpoints, courts should be sensitive to the role of politically accountable officials in deciding which "among reasonable alternative law enforcement techniques should be employed to deal with a serious public danger." 496 U.S. at 453. When a general-impact seizure, such as a seizure effected through a high-speed chase, galvanizes the political process, the actions of politically accountable officials within this context bear the mark of reasonableness.

III. DEPUTY SCOTT RESPONDED REASONABLY TO A SERIOUS THREAT TO PUBLIC SAFETY.

Against this background, Deputy Scott did not violate the Fourth Amendment. His use of force in this case struck a reasonable balance between respondent's Fourth Amendment interests and the government's concern with public safety.

1. First, for the reasons we have suggested, the generality of the public concern with high speed chases means that the Court should approach this case with a thumb on the reasonableness side of the Fourth Amendment scale. The political process has been actively engaged in drawing lines defining acceptable police behavior in this context. That does not altogether insulate high-speed seizures from review, but it does indicate that police conduct has been shaped by a public that might be affected by those police activities, and whose judgments about reasonableness accordingly are due substantial deference. When a case arises in this setting, those challenging the seizure accordingly must make an extraordinary showing to establish that it fell outside the zone of constitutional reasonableness. Respondent cannot do so here.

2. In calculating the Fourth Amendment balance, this is a case in which "[t]he relevant public concern was grave." *Lidster*, 540 U.S. at 427. As a general matter, the Court has emphasized that public safety weighs heavily on the governmental side of the constitutional equation. See, *e.g.*, *Samson* v. *California*, 126 S. Ct. 2193, 2201 (2006); *Skinner* v. *Railway Labor Executives' Ass'n*, 489 U.S. 602 (1989); *United States* v. *Hensley*, 469 U.S. 221, 229 (1985); *South Dakota* v. *Opperman*, 428 U.S. 364, 369 (1976). For this reason, even the most intrusive seizure may be reasonable when the suspect "poses a threat of serious physical harm, either to the officer or others." *Garner*, 471 U.S. at 11. See *id.* at 27 (O'Connor, J., dissenting).

That is the case here. Though high-speed pursuits are dangerous, we explain above that they often serve compelling governmental interests in criminal law enforcement and traffic safety. Considerations like these have made the Court especially deferential to official attempts to make the roads safe. See, *e.g.*, *Sitz*, 496 U.S. at 451 (quoting *Breithaupt* v. *Abram*, 352 U.S. 432, 439 (1957)) (upholding sobriety checkpoints because of their effect on the "increasing slaughter on our highways" caused by drunk driving); *Delaware* v. *Prouse*, 440 U.S. 648, 663 n.26 (1979) (suggesting that mandatory safety inspections at truck weigh-stations are reasonable). The "nature and immediacy" of the concern that supported the seizure in this case therefore is apparent. *Vernonia School Dist. 47J*, 515 U.S. at 660. See Pet. 6 ("Harris and his own expert agree that his driving was reckless and a danger to the public") (citing R. 38, Harris Depo., at 127, 129, 138; R. 37, Alpert Depo., at 68-69, 71-72, 74-85).

3. In addition – and particularly when viewed against the background of significant public and political involvement in drawing up the rules governing high-speed chases – this case plainly is one where "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances

that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham*, 490 U.S. at 396-397. *Cf. Atwater* v. *City of Lago Vista*, 532 U.S. 318, 347 (2001) ("Often enough, the Fourth Amendment has to be applied on the spur (and in the heat) of the moment").

In fact, the imperative to bring a high-speed chase to the quickest possible end is obvious. Precisely because such pursuits are so dangerous, police officers who lawfully initiate a chase must act quickly to terminate it. Chases do not have to continue for long before ending badly; 50 per cent of all pursuit collisions occur in a pursuit's first two minutes, and more than 70 per cent of all collisions occur before the sixth minute. Jeremy Travis, Nat'l Inst. of Justice, U.S. Dept. of Justice, *Pursuit Management Task Force* 2 (1998). Furthermore, at high speeds it is unlikely that officers will be able to prevent harm to innocent bystanders once the risk has become immediate. Given the high rate at which reckless evasion of law enforcement officers injures bystanders and the speed with which chases evolve, it is reasonable for officers to take advantage of any opportunity to end high-speed chases, rather than to wait for the threat to become imminent.

The Court addressed these considerations in rejecting the claim that injury resulting from a high-speed chase violated the Due Process Clause:

> [T]he police on an occasion calling for fast action have obligations that tend to tug against each other. Their duty is to restore and maintain lawful order, while not exacerbating disorder more than necessary to do their jobs. They are supposed to act decisively and to show restraint at the same moment, and their decisions have to be made "in haste, under pressure, and frequently without the luxury of a second chance." * * * A police officer deciding whether to give chase must balance on the one hand the need to stop a suspect and show that flight from the law is

> no way to freedom, and, on the other, the high-speed threat to everyone within stopping range, be they suspects, their passengers, other drivers, or bystanders.

County of Sacramento v. *Lewis*, 523 U.S. 833, 853 (1998) (citation omitted). The difficulty of that decision is, if anything, greatly compounded once a chase has commenced and a police officer must decide how it should be terminated.

4. Against this background, the method used by Deputy Scott to terminate the chase in this case was well within the reasonable range of options. Consider the circumstances that he faced on the evening of the chase here. The suspect, who was speeding to begin with, accelerated to escape from police officers, crossed the double-yellow line and passed cars on the wrong side of the road, and ignored two red lights, Pet. App. 2a, racing headlong through intersections. Understanding the threat that the suspect posed to other motorists, Deputy Scott first attempted to bring respondent to a stop in the drugstore parking lot, where their cars were traveling at low speeds. By blocking the parking lot's exit, Deputy Scott tried to end the chase in a manner that, while placing himself at risk, posed a risk of physical injury to the suspect that was low.

It was only after respondent collided with Deputy Scott's car and sped off that Deputy Scott took more severe action. Even then, he acted deliberately, radioing for permission to make car-to-car contact before executing the bumping maneuver. He carefully selected his moment to act, moreover, making contact with the suspect's car only at a time when no other vehicles were in the vicinity.

These actions were reasonable in every respect, setting this case apart from those involving applications of deadly force that violate the Fourth Amendment. *First*, Deputy Scott reacted appropriately to the threat posed by the suspect. The shooting in *Garner* failed Fourth Amendment scrutiny be-

cause the unarmed suspect's flight posed "no immediate threat to the officer and no threat to others." 471 U.S. at 11. In this case, by contrast, Deputy Scott had ample reason to believe that the suspect's flight was extremely dangerous. Not only did the suspect demonstrate that he was a "threat to the officer" by colliding with Deputy Scott's police cruiser, his reckless driving clearly evinced a "threat to others."

Second, the purpose of the seizure in this case enhances its reasonableness. The officer in *Garner* shot simply to prevent the escape of a nondangerous suspect. See *Garner*, 471 U.S. at 3 n.3 (stating that the officer shot the suspect because the officer "could not have gotten over the fence easily" and "Garner, being younger and more energetic, could have outrun him"). But in this case, preventing escape and apprehending a nondangerous suspect to face subsequent judicial proceedings was not Deputy Scott's primary motivation; the suspect was not about to get away from Deputy Scott and his fellow officers, who stayed with the suspect through his many attempts to evade them. Instead, and unlike in *Garner*, this seizure was aimed not at preventing escape, but at ending the suspect's increasing threat to public safety. While of course "[i]t is not better that all * * * suspects die than that they escape" (*id.* at 11), when suspects place the lives of others at risk, officers like Deputy Scott may reasonably apply deadly force to end the danger to the public. See *ibid.* (allowing deadly force where "the suspect poses a threat of serious physical harm").

Third, Deputy Scott's actions before the seizure confirm that his application of deadly force was warranted. See *Garner*, 471 U.S. at 9 (stating that a seizure must be judged according to the "totality of the circumstances"). The officer in *Garner* shot the suspect immediately, without first attempting a less dangerous seizure technique or giving the suspect more than a fleeting chance to surrender. See *id.* at 3-4. Deputy Scott, on the other hand, first tried a substantially less dangerous approach: he attempted to stop respondent's car at

low speeds while it was leaving the drugstore parking lot. And Deputy Scott gave the suspect ample opportunity to surrender, as he and his fellow officers chased the suspect for nine miles with lights and sirens blazing. See *id.* at 11-12 (allowing deadly force where the suspect poses a threat and, "where feasible, some warning has been given").

Fourth, Deputy Scott's conduct complied with his community's judgments about when vehicle pursuits and the use of deadly force are reasonable. According to the vehicle pursuit policy of the Coweta County Sheriff's Department ("CCSD"), each deputy has the discretion to decide when to initiate, continue, and terminate a high-speed pursuit. Pet. App. 33a. In addition, "[d]eliberate physical contact between vehicles at any time may be justified to terminate the pursuit upon the approval of the supervisor." *Id.* at 34a. It is undisputed here that Deputy Scott received permission over the radio to employ the PIT method. Traveling at high speeds, Deputy Scott managed to end the chase by making contact with the suspect's rear bumper.

Furthermore, CCSD's use of force policy permits deadly force "when the Deputy reasonably believes it is necessary * * * to prevent grave bodily injury to themselves [*sic*] or another, and all other available means of defense have failed or would be inadequate or dangerous," or "when necessary to prevent the commission of * * * any felony which involves the use or threat of physical force or violence against any person." Pet. App. 21a. In this case, the pursuing officers failed to stop respondent in the drugstore parking lot and feared that his reckless driving could cause grave bodily injury to individuals in Peachtree City, a densely populated suburb 28 miles from Atlanta.[12] In addition, force may have

[12] The fact that part of this chase occurred in a densely populated suburb makes Deputy Scott's conduct even more reasonable. The chase moved from less densely settled Coweta County (201 persons per square mile) to the much more densely settled Peachtree

been reasonably necessary to prevent the commission of a violent felony. If the fleeing suspect had struck and killed a police officer or bystander, he may have committed "involuntary manslaughter in the commission of an unlawful act," a felony under Georgia law.[13]

Finally, Deputy Scott's actions were reasonable because, even when he used deadly force, he did so in a manner that was designed primarily to disable the suspect's car rather than bring about his injury or death. The seizure technique employed in *Garner* was unequivocally deadly: the suspect was shot in the back of the head. *Garner*, 471 U.S. at 4. Indeed, *Garner*'s holding is most relevant to applications of deadly force involving firearms. See *id.* at 11 ("A police officer may not seize an unarmed, nondangerous suspect by *shooting him dead*.") (emphasis added); *id.* at 31-32 (O'Connor, J., dissenting) ("The Court's opinion, despite its broad language, actually decides only that the shooting of a fleeing burglary suspect who was in fact neither armed nor dangerous can support a § 1983 action.").

City (1373 persons per square mile), see United States Census Bureau, *State and County Quick Facts*, available at http://quickfacts.census.gov/qfd/states/13/13077.html, before ending on a highway south of Peachtree City. See Pet. App. 3a. In defining urbanized areas and urban clusters, the Census Bureau classifies an area as densely settled when it exceeds 1,000 people per square mile. Census 2000 Urban and Rural Classification, available at http://www.census.gov/geo/www/ua/ua_2k.html.

[13] Georgia law recognizes involuntary manslaughter in the commission of an unlawful act whenever one "causes the death of another human being without any intention to do so by the commission of an unlawful act other than a felony." Official Code of Georgia Ann. § 16-5-3(a). Involuntary manslaughter in the commission of an unlawful act is punishable by imprisonment for one to ten years.

The use of deadly force in this case, however, was not aimed at killing the suspect. Instead, Deputy Scott's maneuver was intended to halt the suspect's car. To be sure, car-to-car contact at high speeds involves considerable risk, but death or serious injury are not inevitable. Deputy Scott acted not to assure respondent's death, but to assure that the suspect's car would be stopped so that it could no longer endanger other cars or drivers. Whatever the ultimate outcome, this intent diminishes the intrusiveness of the government conduct. *Cf. Lewis*, 523 U.S. at 854 ("purpose to cause harm" greatly compounds seriousness of injury inflicted by government actor and is "needed for due process liability in a pursuit chase").

All of these factors distinguish Deputy Scott from the officer in *Garner* and place his actions squarely within the zone of reasonableness.[14] Deputy Scott was a politically account-

[14] Deputy Scott's actions are far more easily defended than those of other officers in cases where this Court precluded § 1983 liability. For instance, the Court recently held that a suspect who fled in a car could not recover from a police officer who shot the suspect through the car's window after the suspect "'had proven he would do almost anything to avoid capture' and that he posed a major threat to, among others, the officers" pursuing him. *Brosseau* v. *Haugen*, 543 U.S. 194, 200 (2004) (per curiam) (quoting *Cole* v. *Bone*, 993 F.2d 1328 (8th Cir. 1993)) (holding that the officer was entitled to qualified immunity because, apart from whether the officer's actions actually violated the Fourth Amendment, her actions were not a clear violation of established law). Like the officer in *Brosseau*, Deputy Scott faced a fleeing suspect who had proven that he would do anything to escape and that he posed considerable danger to the police and to the public. But in contrast to the officer in *Brosseau*, Deputy Scott first attempted to stop the suspect's car using non-deadly means. Moreover, Deputy Scott's use of deadly force was not designed to injure the suspect; rather than shoot the suspect, Deputy Scott tried to end the pursuit by applying force to the suspect's car. If this Court precluded recovery by the suspect in *Brosseau*, surely the facts of this case merit a similar result.

able officer who was forced to make a split-second decision about how to neutralize a serious threat to public safety. In such circumstances, where a suspect races away from police down a public highway, it is difficult to imagine a clearer example of a situation where "society [is] confronted with * * * immediate, vehicle-bound threat to life and limb," and where the police need the flexibility to respond. *City of Indianapolis v. Edmond*, 531 U.S. 32, 43 (2000) (characterizing the need for sobriety checkpoints in *Sitz*).

Local policies provide for a variety of car-disabling tactics, including roadblocks, tire spikes, and the PIT bump method. Barring the most exceptional circumstances, courts should avoid mandating the use of any specific tactic in a particular case. The safety and efficacy of a given tactic varies widely according to the situation, and this Court previously has objected to searching inquiries into which "among reasonable alternative law enforcement techniques should be employed to deal with a serious public danger." *Sitz*, 496 U.S. at 453. "Experts on police science might disagree over which of several methods" of terminating a pursuit "is preferable as an ideal. But for purposes of Fourth Amendment analysis, the choice among such reasonable alternatives remains with the government officials who have a unique understanding of, and a responsibility for, limited public resources." *Id.* at 453-54. This Court accordingly should not second-guess Deputy Scott's decision, made with permission and pursuant to Sheriff's Department policy, to end the pursuit by making contact with respondent's vehicle.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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